

APPLICATION N° 20944/92

S C v/FRANCE

DECISION of 20 February 1995 on the admissibility of the application

Competence *ratione personae* *The Commission has no jurisdiction to examine an application concerning a case of deprivation of possessions by the Algerian State*

Article 1, paragraph 1, of the First Protocol

- a) *The "Declarations on Guarantees" signed by France and Algeria on 19 March 1962 do not give rise to a right, such as would be protected by Article 1 of Protocol No 1 for French citizens whose possessions were nationalised by the Algerian State to receive compensation from the French Government*
- b) *Compensation proceedings (France) for French citizens whose possessions were nationalised by the Algerian State - dispute concerning the amount of the compensation and the length of the compensation proceedings examined by the Commission under the right to peaceful enjoyment of possessions*

Examination of the proper balance to be struck between the general interest and safeguarding the applicant's rights

The Contracting States enjoy a wide margin of appreciation in determining the demands of the general interest

Article 14 of the Convention in conjunction with Article 1 of the First Protocol
Allegations of discrimination based on a comparison of two factual situations which prove to be different manifestly ill-founded In this case, someone whose possessions have been nationalised by the Algerian State is not in a situation analogous to that of someone whose possessions have been nationalised by the French State

THE FACTS

A *Particular circumstances of the case*

The applicant, a French citizen, was born in 1921 in Algeria. He is retired and lives in Moissac.

The facts of the case, as submitted by the applicant, may be summarised as follows:

The applicant's family had extensive farming interests in Algeria. After Algeria became independent, it issued a decree dated 1 January 1963 nationalising (in breach of the Evian Accords and the Declaration on Guarantees of 19 March 1962), all land used for agricultural purposes belonging to physical or legal persons who do not possess Algerian nationality on the date of the present decree. The applicant's family was dispossessed of its real property in Algeria by a Decision dated 18 November 1963.

The applicant's family had also owned a farm in Moissac in France since 1958. The family settled there when it returned to metropolitan France in 1964.

The Law of 26 December 1961 on the Re-entry and Resettlement of French Citizens from Overseas 'Departements' and Territories was applied to settlers returning from Algeria to France in order to facilitate their economic and social integration into the country. The implementing Decree of 10 March 1962 laid down the conditions for the allocation of agricultural resettlement loans and grants.

As the owner of a farm in France, the applicant's father did not qualify for Government assistance for repatriates under the above-mentioned Decree. However, the applicant himself did qualify. The family's financial difficulties were such that the Moissac farm, which was subject to numerous mortgages, was put into liquidation and sold at public auction on 15 June 1972.

Compensation arrangements

On 14 December 1971 the applicant and his mother lodged an application for compensation which was registered on 3 May 1972 as No. 1064. On 4 April 1989, the Tarn and Garonne Joint Commission began the process of investigating the claims. On 15 December 1979, the "prefet" (chief administrative officer) of Tarn and Garonne transferred it to a priority list and allocated it No. 161, whereas previously it had been registered as No. 469. On 5 November 1981 the National Compensation Agency for French Citizens from Overseas "Departements" and Territories (l'Agence Nationale d'Indemnisation des Français d'Outre Mer, hereinafter ANIFOM) fixed the amount of compensation.

Compensation under the Law of 8 January 1978 was paid in instalments spread over ten years, bearing interest at the rate of 6.5% from 1978 to 1988. Compensation under the Law of 16 July 1987 will not bear interest and will be paid in instalments up to and including the year 2000, in the following manner: 30% before 1999 and 70% over the years 1999 and 2000. The total amount of compensation awarded under the different Laws came to 5,266,694 French francs (FRF). In accordance with the valuation tables adopted in January 1978, the Algerian assets were attributed a value of FRF 12,631,553.

Proceedings before the Administrative Courts

The applicant and his mother sought compensation for the loss and damage which they had suffered as a result of the delay in deciding their claim. They applied to Toulouse Compensation Disputes Board, which dismissed their application on 13 January 1983. They then applied to Paris Administrative Court for the Board's decision against them to be quashed and for a declaration that ANIFOM was responsible for the delay.

On 14 January 1985, Paris Administrative Court dismissed the appeal. It held that the delay in deciding their claim and paying the compensation was due exclusively to the order in which the compensation claims were examined, which had been established by Tarn and Garonne Joint Commission. It could not be imputed to ANIFOM as the Commission was not under its authority. The Conseil d'Etat upheld this judgment on 2 June 1989.

In addition, the applicant, acting as the representative of his late father's estate, applied to Paris Administrative Court seeking the quashing of the decision rejecting his father's claim for repatriates' agricultural resettlement compensation and claiming compensation in the sum of FRF 20,000,000. He complained of the fact that his father had been ruled ineligible for repatriates' agricultural resettlement loans and grants. He also claimed that he had suffered an unjustified delay in the investigation of his compensation claims.

On 19 February 1986, Paris Administrative Court dismissed the application. In relation to the first head of claim, it considered that the administrative authorities were not liable in tort given that the applicant's father was already settled in his French property at the time he made his compensation claims.

On the second head of claim, the court found that the delay was not out of the ordinary and did not give rise to any liability on the part of the State, given that Article 34 of the Law of 15 July 1970, which created a right to compensation for repatriates who had been dispossessed of their property, laid down an order of priority for the examination of claims based on certain criteria such as the applicants' financial resources, age, family dependants and state of health. On 27 March 1992 the "Conseil d'Etat" upheld this judgment, adding that the applicant's father had not validly

challenged the "préfet's" decision of 19 January 1966 (which had since become final) refusing to re-register him as a professional farmer. It also held that

"M.C. did not submit any evidence capable of establishing that, on the criteria set out in the Law, the application which he lodged on 3 May 1972 should have been investigated as a matter of priority. Therefore, his application, in so far as it seeks compensation for loss and damage allegedly caused by the excessive length of time which, he claims, the administrative authorities took to deal with his case, must be rejected ()"

B *Relevant domestic law and practice*

1 Law No. 61-1439 of 26 December 1961 on the Re-entry and Resettlement of French Citizens from Overseas "Départements" and Territories

This Law entitles French citizens returning from overseas "départements" and territories, which was deemed to include those who had settled in Algeria, to benefit from certain measures designed to facilitate their reintegration into society

2 Decree No. 62-261 of 10 March 1962

French citizens repatriated in the circumstances covered by the Law of 26 December 1961 may qualify for repatriation, subsistence and reintegration allowances, as well as for social security benefits

3 Declarations on Guarantees signed by the French and Algerian Governments on 19 March 1962

Declaration on economic and financial cooperation

- Article 12

"Algeria shall ensure, without any discrimination, the free and peaceful enjoyment of property rights acquired on its territory prior to self-determination. No one shall be deprived of these rights without fair compensation set in advance."

- Article 13

"France shall give Algeria aid specifically to assist Algeria to carry out its agrarian reform policy by the repurchase, in whole or in part, of property rights held by French citizens

The competent Algerian authorities shall draw up a repurchase plan, on the basis of which detailed provisions relating to this aid shall be agreed between the two countries so as to reconcile the implementation of Algerian economic and social policy with the normal principle that French financial aid is drawn down in instalments over a period."

4 The payment of compensation for the Algerian nationalisations is governed by the provisions of the Law of 15 July 1970, as amended by the Laws of 8 January 1978 and 16 July 1987

5 Case-law

The "Conseil d'Etat", in the *Moraly judgment of 31 January 1969*, which was based on an executive certificate from the Ministry of Foreign Affairs as to the interpretation of the 1962 Declarations on Guarantees, held that none of the Declarations' provisions was intended to establish a right to compensation from the French State for losses suffered by French citizens resident in Algeria whose rights had been *infringed*

6 Under Law No 70-632 of 15 July 1970 on a National Contribution to Compensation for French Citizens from Overseas "Départements" and Territories

- ANIFOM is made responsible for implementing the relevant administrative and financial measures,

- claims are to be investigated in order of priority, according to the applicants' financial resources, age, dependants and state of health,

- the order of priority is to be set by Joint Commissions of six members each, based in each "département" Thereafter, ANIFOM shall be responsible for investigating the compensation claims,

the method of calculating the compensation is laid down In the case of agricultural property, the Law provides that the compensation shall be based on a flat-rate value attributed to the underlying property according to tables laid down in Decrees made after consultation of the "Conseil d'Etat" (Article 17) The compensation to be paid is then calculated by multiplying the total underlying value by a coefficient (Article 41)

The later laws laid down coefficients for recalculating the underlying value

COMPLAINTS

1 The applicant, acting both in his own name and as the representative of his late father's estate, considers that he has been deprived of his possessions within the meaning of Article 1 of Protocol No 1 and that he has not obtained the fair compensation provided for by the "Declarations on Guarantees" signed by the French Government on 19 March 1962 He complains that the French authorities have not fulfilled their obligations under these Declarations He also challenges the length of the compensation proceedings, the level of compensation and the fact that it is paid in instalments

2 In relation to the compensation proceedings, the applicant complains of discrimination under Article 14 of the Convention, in that he was allegedly not compensated in the same way as a French citizen, who was resident in metropolitan France and was the victim of a nationalisation there, would have been

THE LAW

1 The applicant considers that he has been deprived of his possessions without receiving fair compensation. He complains that the French State has not fulfilled its obligations under the Declarations on Guarantees of 1962.

He invokes Article 1 of Protocol No. 1, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Commission recalls that Article 1 of Protocol No. 1 contains three distinct rules (Eur. Court H.R., James and Others judgment of 21 February 1986, Series A no. 98 B, p. 29, para. 37): the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions; the third rule, set out in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest.

In order to apply this Article, several different aspects need to be examined separately:

a) In the first place, in so far as the applicant is complaining about the actual deprivation of possessions, the Commission emphasises that the possessions of the applicant and his family were nationalised by the Algerian State, which is not a party to the Convention.

Accordingly, this complaint is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 27 para. 2.

b) Secondly, the Commission must establish whether the 'Declarations on Guarantees' signed by the French Government in 1962 gave the applicant a right to compensation which could be described as a "possession" within the meaning of Article 1 of Protocol No 1

The Commission considers that the issue raised in the present application is distinguishable from that dealt with in the case of *Beaumartin v France* (Eur Court HR, judgment of 24 November 1994, to be published in Series A no 296 B, and Comm Report 29 6 93) In that case, the Moroccan Government had agreed to pay the French Government a single lump sum by way of compensation, which the French Government would be responsible for apportioning among the beneficiaries The Court was therefore able to infer that the agreement concluded between the two States had given rise to a right to compensation which was protected by the Convention (para 28 of the judgment)

In the present case, the Commission observes that the Evian Accords provided that no one should be deprived of his possessions without fair compensation It was also agreed that France would give Algeria "aid specifically to assist Algeria to carry out its agrarian reform policy by the repurchase, in whole or in part, of property rights held by French citizens" However, no concrete steps have been taken to implement these provisions and, in contrast to the situation with Morocco, Algeria has paid no compensation either to France or to the persons affected by the nationalisations

In this regard, the Commission notes that the "Conseil d'Etat", in a judgment of 31 January 1989 based on an executive certificate from the Ministry of Foreign Affairs as to the interpretation of the Declarations, held that the Declarations did not mean that French citizens resident in Algeria whose rights had been infringed had a right to be compensated for their losses by the French State

Therefore, the Commission considers that the applicant, who could not claim a right to compensation from the French authorities under the above-mentioned Accords, but who has nonetheless received compensation under other statutory provisions, is not entitled to invoke the protection of the provisions of Article 1 of Protocol No 1 in this regard

It follows that this complaint is manifestly ill-founded within the meaning of Article 27 para 2 of the Convention

c) Finally, the Commission examined the applicant's complaint concerning the compensation proceedings, as regards the level of the compensation, the fact that it is paid in instalments and the length of the compensation proceedings

Even supposing that the applicant's right to compensation can be described as a "possession" within the meaning of Article 1 of Protocol No 1, the Commission considers that this complaint is in any event manifestly ill founded for the reasons set out below

The Commission notes that the applicant is not complaining either of a deprivation of possessions within the meaning of Article 1 para 1 of Protocol No 1 or of a measure controlling the use of property as referred to in paragraph 2. Accordingly, the Commission will consider the complaint in the light of the first sentence of the first paragraph.

According to the case law of the Convention organs, it is necessary to determine whether a fair balance was struck between the demands of the general interest and the requirements of the protection of the individual's fundamental rights (cf. among others Eur. Court H.R., *Sporrong and Lönnroth* judgment of 23 September 1982, Series A no 52, p 26, para 69).

On the question of the level of the compensation and the fact that it is paid in instalments, the Commission recalls that the Convention organs' power of review is limited to ascertaining whether the choice of compensation terms falls outside the State's wide margin of appreciation in this domain (cf. *James* judgment, *op cit*, para 54).

Further, even where the State which is responsible for the deprivation of possessions also pays the compensation, Article 1 of Protocol No 1 does not guarantee a right to full compensation in all circumstances, since legitimate objectives of "public interest" may call for reimbursement of less than the full market value (cf. *mutatis mutandis*, Eur. Court H.R., *the Holy Monasteries v Greece* judgment of 9 December 1994, to be published in Series A no 301 A). In the instant case, the Commission notes that the French authorities, which were not the authorities which carried out the nationalisations, were faced with a flood of compensation claims in such numbers that they could meet them neither in full nor immediately. The Commission further notes that part of the compensation paid to the applicant accrued interest over ten years, thus mitigating the effects of payment by instalments.

As regards the length of the compensation proceedings, the Commission does not exclude the possibility that this could in itself infringe the applicant's rights under the above cited Article 1. However, it notes that, on the facts, the relevant statutory provisions provided that cases should be investigated according to an order of priority based on the applicants' financial resources, age, dependants and state of health.

The Commission observes that in its judgment of 7 March 1992, the Conseil d'Etat held as follows:

M.C. did not submit any evidence capable of establishing that, on the criteria set out in the Law, the application which he lodged on 3 May 1972 should have been investigated as a matter of priority. Therefore, his application, in so far as it seeks compensation for loss and damage allegedly caused by the excessive length of time which, he claims, the administrative authorities took to deal with his case, must be rejected ()

On this basis, the Commission considers, taking into account the particular circumstances of the case and the wide margin of appreciation enjoyed by the French authorities in this field, that those authorities have not failed to strike a fair balance between the interests in question

It follows that this complaint is manifestly ill founded within the meaning of Article 27 para 2 of the Convention

2 The applicant alleges a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No 1, in that he considers that he has been treated differently from French citizens resident in metropolitan France whose possessions have been nationalised by the French Government

Article 14 guarantees the enjoyment of the rights and freedoms set forth in the Convention without any discrimination

The Commission recalls that, according to the case-law of the Convention organs, Article 14 provides protection against any discrimination for individuals or groups of individuals placed in comparable situations

However, the Commission observes that the applicant, whose possessions were nationalised by the Algerian authorities, is not in a situation comparable to that of persons whose possessions are nationalised by the French State

Therefore, this complaint is manifestly ill founded within the meaning of Article 27 para 2 of the Convention

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE